



**APPEAL (LAND-2016-01799)
OF DENIAL TO EXTENTION REQUEST OF TYPE II SITE PLAN ENTITLEMENT
(LAND-2013-00171)
PLANNING DEPARTMENT REPORT TO HEARING EXAMINER**

MEMO TO: Sharon Rice, Hearing Examiner

FROM: Planning Department

DATE: OCTOBER 4, 2016

PREPARED BY: Sarah Pyle, Senior Planner (425) 556-2426

SUBJECT: ADMINISTRATIVE APPEAL OF DENIAL TO EXTENSION
REQUEST FOR TYPE II SITE PLAN ENTITLEMENT FOR THE
PROJECT KNOWN AS ANJUMANN E BURHANI (LAND-2013-
00171).

REQUEST: The appellant is appealing the denial to the extension requested of the
Additional Information Letter deadline.

HEARING DATE: October 19, 2016

ATTACHMENTS

EXHIBIT A: SEPA Application

EXHIBIT B: SEPA CAO Worksheet

EXHIBIT C: E-mail from Applicant Team Requesting Extension

EXHIBIT D: E-mail from Organization Team Requesting Extension

EXHIBIT E: E-mail by Min regarding Additional Information Letter

EXHIBIT F: E-mail from Staff to File of Detailed Reminder to Applicant

EXHIBIT G: E-mail from Staff to Applicant Regarding Deadline 1

EXHIBIT H: E-mail from Staff to Applicant Regarding Deadline 2

EXHIBIT I: Project Contact Form

EXHIBIT J: City's Response to Extension Request

EXHIBIT K: E-mail to Applicant Notifying of Submittal Requirements

EXHIBIT L: Notice of Appeal Hearing

BACKGROUND

Appellant Anjumann E Burhani
20521 NE 22nd Ct
Sammamish, WA 98074

Project
Applicant: Sam Cameron
Rolluda Architects
105 South Main St 323
Seattle, WA 98104

Site Plan Entitlement Formal Application Date: February 2, 2014, File # LAND-2013-0189

Appeal Filed: August 3, 2016

Hearing Date: October 19, 2016

Location: The proposed project is located at 15252 NE 51st Street

Parcel Size: The total area of the site is 2.3 acres

Neighborhood: The proposed project is within the Overlake Neighborhood as identified within the Comprehensive Plan.

Land Use Designation: This property is within the Overlake Neighborhood and in the R-5 zone which is envisioned as a low to moderate density residential neighborhoods on lands suitable for urban development. These goals are further defined in the Comprehensive Plan Policy LU-34.

Zoning Designation: The subject site is zoned R-5, within the Overlake Neighborhood.

Surrounding Land Use and Zoning:

	<u>Zoning</u>	<u>Land Uses</u>
North:	R-5	Subdivision
East:	R-5	Underdeveloped single family parcel

South: ROW
West: WSDOT

City/ State owned ROW
520 highway

Access: Vehicle access for this site will be from NE 51st Street

SEPA: Has not been issued. Application for SEPA submitted for Review during PREP (Exhibit A) as well as, a SEPA CAO worksheet (See Exhibit B).

NOTICE OF DECISION: Not issued for project.

JURISDICTION

In accordance with RZC Section 21.76.060(I), Appeal of Type II Decisions, the appellant is required to specify the basis of their appeal. An appeal must be based on an error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the public hearing or consideration of approval. The appellant must provide: 1) facts demonstrating that they were adversely affected by the decision, 2) a concise statement identifying each alleged error and the manner in which the decision fails to satisfy the applicable decision criteria, 3) the specific relief requested, and 4) any other information reasonably necessary to make a decision on the appeal.

APPELLANT'S BASIS FOR APPEAL

The appellant has appealed the Denial of the Extension Request for Resubmittal based upon the following assertions:

1. Impacted by waiting for City to respond to Applicant
2. Impacted by change in City personnel
3. Was not notified at any-time previously that SEPA was required for project
4. Engineer requested additional changes to Traffic Report that had previously been approved.
5. Extension Request was made prior to 90 days following the issuance of the Additional Information Letter

RELIEF SOUGHT BY APPEAL

The appellant is seeking the following relief through this appeal:

- 1) Reversal of Denial to Extension Request
- 2) If denial of Extension Request is not overturned, then waiving of all application fees for the resubmittal of the Site Plan Entitlement permit..

ANALYSIS of BASIS for APPEAL

The following is the criteria for applying for appeal as outlined in RZC 21.76.060I.2.. Staff has provided an outline below of the appeal application questions that must be responded to in full by the appellant as well as, an analysis of how the criteria for application/ appellant responses has or has not been properly met.

Per RZC 21.76.060I.2.: Commencing an Appeal

(a) Who May Appeal. Any party of record may appeal the decision. The applicant has appealed the denial of the request for extension.

(b) Form of Appeal. A person appealing a Type I or II decision must submit a completed appeal form which sets forth the following:

1. Facts demonstrating that the person is adversely affected by the decision;

- *Response A (by applicant) to question 1 of section B of the Application for Appeal:* "Extension filed with due reason on justification of new requirements."
 - This is not a finding of fact. Within the request for extension provided by appellant, it is stated that the applicant has worked expeditiously which is not illustrated in communication or submittals to the City throughout the past year and half. Additionally, the letter requesting an extension, dated June 2, 2016, was sent to staff by the Anjumann E Burhani (AEB) leadership and is the first time the applicant's team disputes the Additional Information being required on the project.

- *Response B (by appellant) to question 1 of section B: “Resubmitting is a significant loss on a non-profit organization.”*
 - This is not a finding of fact of the denial letter to which the applicant is appealing. This is a personal statement of impact or feelings of the organization.
- *Response C (by appellant) to question 1 of section B: “City delays contributed to significant delays and cost.”*
 - This is not a fact or finding of the letter denying the extension to which the applicant is appealing. This is a personal statement and perspective which lacks supporting information or data that should have been provided within the Basis for Appeal that was submitted on August 3, 2016.

Specific facts and/ or findings were not provided as part of the appeal request. Due to this staff respectfully requests that the Hearing Examiner dismiss the Appeal Hearing and request.

2. A concise statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria;

The letter, attached to the appeal application, was provided and contains the basis of the appellant’s response to this question. The content of attached letter is a general narrative of history, project and membership background of the organization, impacts of the denial and general complaints. The content of the letter does not provide concise statements for each alleged error of fact or law. For these reasons staff respectfully request that the Hearing and application for appeal be dismissed.

3. The specific relief requested;

- a. The applicant is requesting the following relief:
 - To have the denial decision of the request for extension reversed and the application LAND-2013-00171 reinstated.
 - If the decision for the denial of extension is not reversed the applicant requests that the Hearing Examiner waive the Site Plan Entitlement submittal fee for their resubmittal.
 - This is not an element of relief that may be requested or approved as part of an appeal hearing. The City does not have a process that permits the waiving of fees for a non-profit or any other

organizations or individuals. If it is deemed by the Hearing Examiner that the denial was issued properly and shall not be reversed, all applicable submittal fees shall apply for any future permits or applications filed within the City of Redmond.

○

4. Provide a written statement of findings of fact which are being appealed:

a. The applicant's response to this criteria:

- "New requirements for are not clearly articulated as to why they need."
 - This statement does not provide findings of fact. The applicant has not provided an example or reference. Additionally, staff is not required to provide an explanation for why each item within the Additional Information Letter is requested beyond the fact that what has been submitted does not meet code compliance or completeness as required within the City's codes, policies, submittal requirements and procedures as previously shared and reviewed with the applicant. Lastly, the Additional Information Letter, dated March 3, 2016, clearly stated that staff was available for any questions the applicant may have and provided the individual contact information for each reviewer that included a request within the letter, thus inviting the applicant to contact the City for additional clarification if needed and that staff would be available.
- "See attached letter."
 - The attached letter, dated August 3, 2016, was provided and attached to the appeal application form for this question. The attached letter's content is a general narrative of history, project and membership background of the organization, impacts of the denial and general complaints. The letter's content does not provide at any time concise statements of findings of fact for to what is being appealed or responses to the Application for Appeal form questions.

The appeal application was required to be submitted completely and in-full no later than August 3, 2016. The appeal was submitted within this required time period.

ANALYSIS OF ASSERTIONS

Statement identifying each alleged error of fact, law, or procedure, and the manner in which the decision fails to satisfy the applicable decision criteria was not provided by the appellant, due to this fact staff has provided an analysis and response to five general complaints or feelings submitted as part of the attached letter to the Application for Appeal.

1.) Impacted by waiting for City to respond to applicant.

- a. The City staff has responded in a swift and timely manner to all of the applicant's e-mails, calls, request for meetings, as well as, request to review materials, documents or other information in preparation for a submittal. Since January 2015 staff can show that there were no periods of any lengths beyond 1-5 days for which staff did not provide a complete response to the applicant; however, the applicant has gone extended periods, sometimes greater than 30 days without responding to staff or providing requested materials needed to proceed forward in the review and approval process. Several communications between staff and the Applicant in 2015 followed a pattern of staff requesting an estimated date of submittal of the necessary information, the applicant providing one, staff following up on a regular basis for progress check-ins and the applicant providing information or feedback greater than a month after the agreed date of submittal and/or communication. The applicant expressed on multiple occasions apologies for delays and that they were greatly related to internal process and approvals needed from the organization leadership, to persons being out of town or other internal issues that contributed to not being able to authorize the consultant work needed. The City has provided what it has deemed a reasonable level of patience, cooperation and flexibility.

2.) Impacted by change in City personnel.

- a. The typical Type II application for Site Plan Entitlement takes from start to finish 228 calendar days approximately (PREP, Formal Notice of Application comment period, Technical Committee Approval, SEPA comment and Appeal period, Notice of Decision routing for approval and Notice of Decision appeal period are included within the 228 days) This proposed project has exceeded 1000 calendar days. The typical Type II application averages three reviews with 14 day

resubmittal periods. This project's resubmittals have exceeded 30-60 days for the resubmittals provided since January 2015.

Since 2013 City review staff assigned to LAND-2013-00171 has retired or moved on to other jurisdictions as is a normal evolution of staff over a period of three years. When a new staff member takes over any project within the City it is typical for that staff member to verify compliance of anything they will be stamping and signing their approval to. During the process of a new transportation engineer taking over the project it was illuminated upon her review that there were elements of the Traffic Report that were incomplete or in-sufficient. The opportunity for this review was a result of the length of time the project had gone incomplete and unapproved; however, it does not diminish the findings of the engineer's review. In-fact it is in benefit to the applicant, because the lack of completeness and assurances/ foundation missing from the report submitted by the applicant could have left the project vulnerable to appeal. These same findings should have been highlighted and resolved by the applicant's engineer prior to submittal. Secondly, due to the length of time the issue of storm water went incomplete and unresolved by the applicant, new road improvements, street alignments and plans went into effect adjacent to the proposed development further supporting staffs' need to re-verify the completeness, accuracy and relevancy of the 2013 traffic study and transportation plans. Lastly, while change in personnel did result in updated findings by Transportation staff, it did not result in any further additional requirements by Planning, Stormwater, Utilities or Fire. The City did have to bare the cost and investment required to bring all new staff up-to-speed and to complete the re-review of all documents still outstanding.

3.) SEPA, applicant was not made known that SEPA was required for project until recently.

- a. The applicant provided in 2013 a signed SEPA application (Exhibit A) and a SEPA CAO Worksheet (Exhibit B) filled out stating that their project was not exempt from SEPA and would require a SEPA review and Determination. The signed SEPA Application and SEPA CAO worksheet as completed by the applicant was submitted by staff as exhibits for the hearing. While the SEPA Application CAO worksheet and SEPA Checklist are reviewed as part of PREP for any major errors, SEPA may not be issued until after the Notice of Application has been completed on the project during the formal phase.

4.) Transportation updates required to the Traffic Report from what had been previously submitted and approved.

- a. Updates required by the new Transportation Review Engineer to the Traffic Report were to ensure the report met compliance and provided complete information and foundation on the project's egress and ingress proposal. When a new staff member takes over any project within the City it is the procedure for the new staff member to verify compliance of anything they will be approving. During the review of this project the existing transportation engineer left service with the City and was replaced with a new transportation engineer. Upon her review, it was discovered that there were elements of the report which were incomplete or insufficient. The opportunity for this review was a result of the length of time the project had gone incomplete and unapproved; however, it does not diminish the findings of the engineer's review. In-fact it is in benefit to the applicant, because the lack of completeness and assurances/ foundation missing from the report submitted by the applicant could have left the project vulnerable to appeal. Additionally, during this time the storm water issues remained incomplete and unresolved by the applicant, new road improvements, street alignments and plans went into effect adjacent to the proposed development further supporting staffs need to re-verify the completeness, accuracy and relevancy of the 2013 traffic study and transportation plans.

5.) Extension was requested before 90th day of Additional Information Request Letter resubmittal was required.

- a. The Extension requests (Exhibit C and Exhibit D) were provided to the City only two full business days prior to the deadline of submittal. This was the first contact the appellant had attempted to make with the City regarding the deadline for submittal. The extension request did not provide a new date which compliance of the submittal could be met by the project team. The extension request was the first time during the Additional Information submittal time window that the applicant refuted the City's transportation request and asked for relief.

STAFF RECOMMENDATION

Based on the analysis included in this report, staff recommends the Hearing Examiner deny the appeal of the Denial to the Additional Information Letter Request for Extension of the Anjumann

E Burhani proposal.

CONCLUSIONS IN SUPPORT OF THE STAFF RECOMMENDATION

The appellant has the burden to prove that the City erred in issuing the Denial to the Request for Extension to the Additional Information Letter Submittal Deadline. The appellant has provided no evidence to meet that burden and cannot establish that the City erred procedurally or substantively in issuing the denial.



Robert G. Odle, Director
Department of Planning and
Community Development



Linda E. De Boldt, Director
Department of Public Works